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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,334	04/09/2004	Michael M. Bellick	ARP 5588.1	9991

321 7590 02/09/2006

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ONE METROPOLITAN SQUARE
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ST LOUIS, MO 63102

EXAMINER	
SPAHN, GAY	
ART UNIT	**PAPER NUMBER**
3673	

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/821,334	BELLICK ET AL.	
	Examiner	Art Unit	
	Gay Ann Spahn	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 April 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Notice of Appeal and Filing of Appeal Brief

It is Examiner Spahn's position that the issues in this application are not yet ready for appeal since:

(1) Examiner Saldano failed to address the merits of the rejection of claim 17 in her Final Office Action mailed 25 March 2005 (even though on the Office Action Summary page (i.e., PTOL-Form-326) she listed claims 1-18 as being rejected); and

(2) three of Examiner's Saldano's four rejections in her Final Office Action (i.e., the rejection of claims 1-7, 11-13, 16, and 18 as being unpatentable over Basch (U.S. Patent No. 2,234,546) in view of Cantwell (U.S. Patent No. 6,175,976) in paragraph no. 3, the rejection of claims 8, 9, and 14 as being unpatentable over Basch (U.S. Patent No. 2,234,546) in view of Cantwell (U.S. Patent No. 6,175,976) and Schaye (U.S. Patent No. 2,622,248) in paragraph no. 4, and the rejection of claim 15 as being unpatentable over Basch (U.S. Patent No. 2,234,546) in view of Cantwell (U.S. Patent No. 6,175,976) and Li (U.S. Patent No. 6,718,577) in paragraph no. 5) cannot be maintained.

Therefore, Examiner Spahn is reopening prosecution and withdrawing the finality of the Final Office Action mailed on 25 March 2005.

A rejection of the claims based on both prior art of record and newly found prior art is set forth below.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the

(1) the closure comprising "a pair of slide fasteners for selectively adjusting the size and position of the vent opening" as specifically recited in claims 9 and 14,

must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 5, 6, 10-13, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrigues (U.S. Patent No. 5,881,405) in view of Cantwell (U.S. Patent No. 6,175,976).

As to claim 1, Garrigues discloses a vented sleeping bag (10) comprising:

an elongate shell (12, 14) defining an inner volume sized and shaped to receive a user therein, the elongate shell having a head end (18), a foot end (17), left and right sides extending longitudinally of the shell, an overlying portion (14) adapted to overlie said user and an underlying portion (12) adapted to underlie said user;

a fastener (unnumbered stitching connecting the top piece (14) to the bottom piece (12) - see col. 3, lines 37-39) joining the overlying and underlying portions (14, 12);

at least one vent (40, 30, 20) in said overlying portion (14) of the shell (12, 14) located adjacent the foot end (17) of the shell (12, 14) between the left and right sides of the shell (12, 14); and

a closure (44) selectively movable between a closed position (not shown, but when hook and loop fastener pair (46, 48) shown in Fig. 4 are attached to each other)

for closing said at least one vent (40, 30, 20) and an open position (Fig. 4) for creating a vent opening for ventilating the inner volume of the shell (12, 14).

The examiner notes that since the vent duct portion (30) of the at least one vent (40, 30, 20) is in the overlying portion (14) of the shell (12, 14), the claim limitation is deemed to be met.

Garrigues fails to explicitly disclose that his fastener selectively joins the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user.

Cantwell discloses a sleeping bag (10) having an elongate shell (12) with a fastener (28) selectively joining the overlying and underlying portions (24, 22) such that the overlying and underlying portions (24, 22) can be partially separated to allow entry into and exit out of the inner volume of the shell (12) by the user.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag (10) of Garrigues by replacing the fastener (i.e., stitching) of Garrigues with the fastener (28) of Cantwell in order to make it easier for a user to get into and out of the sleeping bag.

As to claim 2, Garrigues in view of Cantwell discloses the sleeping bag of claim 1 as discussed above, and Garrigues also discloses that the at least one vent (40, 30, 20) extends longitudinally of the shell (12, 14).

The examiner notes that since the vent duct portion (30) of the at least one vent (40, 30, 20) extends longitudinally of the shell (12, 14), the claim limitation is deemed to be met.

As to claim 5, Garrigues in view of Cantwell discloses the sleeping bag of claim 1 as discussed above, and Garrigues also discloses that the shell (12, 14) further comprises an end panel (16) closing the foot end (17) of the shell (12, 14).

As to claim 6, Garrigues in view of Cantwell discloses the sleeping bag of claim 5 as discussed above, and Garrigues also discloses that the at least one vent (40, 30, 20) extends into the end panel (16) of the shell (12, 14) toward the underlying portion (12) of the shell (12, 14).

The examiner notes that since the foot vent portion (40) of the at least one vent (40, 30, 20) extends into the end panel (16) of the shell (12, 14), the claim limitation is deemed to be met.

As to claim 10, Garrigues in view of Cantwell discloses the sleeping bag of claim 1 as discussed above, and Garrigues also discloses a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening.

The examiner notes that the recitation of "said mesh cover collapsing within the shell when the at least one vent is closed" is a recitation of intended use and that as such all the examiner need do is show that the reference is capable of performing said intended use. The mesh cover (40, 24) of Garrigues is capable of "collapsing within the shell when the at least one vent is closed" due to gravitational forces because there is no rigid frame member connected to the shell (12, 14) of Garrigues that would prevent

the mesh cover (40) from collapsing within the shell (12, 14), particularly when no user is inside the sleeping bag (10). Also, one could push on the mesh cover (40, 24) of Garrigues with their hand or finger and thus collapse the mesh cover (40, 24) within the parameters of the shell (12, 14) of the sleeping bag (10) in order to close the at least one vent (40, 30, 20).

As to claim 18, Garrigues in view of Cantwell discloses the sleeping bag of claim 1 as discussed above, and Cantwell also discloses that said fastener (28) is a slide fastener.

As to claim 11, Garrigues discloses a vented sleeping bag (10) comprising:

an elongate shell (12, 14) defining a inner volume sized and shaped to receive a user therein, the elongate shell (12, 14) having a head end (18), a foot end (17), left and right sides extending longitudinally of the shell (12, 14), an overlying portion (14) adapted to overlie said user, and the underlying portion (12) adapted to underlie said user;

a fastener (unnumbered stitching connecting the top piece (14) to the bottom piece (12) - see col. 3, lines 37-39) joining the overlying and underlying portions (14, 12);

at least one longitudinal vent (40, 30, 20) in said overlying portion (14) of the shell (12, 14) located between the left and right sides of the shell (12, 14) and extending longitudinally of the shell (12, 14); and

a closure (44) selectively movable between a closed position (not shown, but when hook and loop fastener pair (46, 48) shown in Fig. 4 are attached to each other)

for closing said at least one longitudinal vent (40, 30, 20) and an open position (Fig. 4) for creating a vent opening for ventilating the inner volume of the shell (12, 14).

The examiner notes that the at least one longitudinal vent (40, 30, 20) has a vent duct portion (30) which is longitudinal and which is in the overlying portion (14) of the shell (12, 14) so that the claim limitation is deemed to be met.

Garrigues fails to explicitly disclose that his fastener selectively joins the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user.

Cantwell discloses a sleeping bag (10) having an elongate shell (12) with a fastener (28) selectively joining the overlying and underlying portions (24, 22) such that the overlying and underlying portions (24, 22) can be partially separated to allow entry into and exit out of the inner volume of the shell (12) by the user.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ventilated sleeping bag (10) of Garrigues by replacing the fastener (i.e., stitching) of Garrigues with the fastener (28) of Cantwell in order to make it easier for a user to get into and out of the sleeping bag.

As to claim 12, Garrigues in view of Cantwell discloses the sleeping bag of claim 11 as discussed above, and Garrigues also discloses that the shell (12, 14) further comprises an end panel (16) at the foot end (17) of the shell (12, 14) and wherein the at least one longitudinal vent (40, 30, 20) is partially positioned within the overlying portion (14) and the end panel (16).

The examiner notes that the at least one longitudinal vent (40, 30, 20) has a vent duct portion (30) which is positioned within the overlying portion (14) of the shell (12, 14) and a foot vent (40) which is in the end panel (16) of the shell (12, 14) so that the claim limitation is deemed to be met.

As to claim 13, Garrigues in view of Cantwell discloses the sleeping bag of claim 11 as discussed above, and Garrigues also discloses that the at least one longitudinal vent (40, 30, 20) is located about midway between the left and right sides.

The examiner notes that the vent duct portion (30) of the at least one longitudinal vent (40, 30, 20) is located about midway between the left and right side so that the claim language is deemed to be met.

As to claim 15, Garrigues in view of Cantwell discloses the sleeping bag of claim 11 as discussed above, and Garrigues also discloses a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening.

The examiner notes that the recitation of "said mesh cover collapsing within the shell when the at least one vent is closed" is a recitation of intended use and that as such all the examiner need do is show that the reference is capable of performing said intended use. The mesh cover (40, 24) of Garrigues is capable of "collapsing within the shell when the at least one vent is closed" due to gravitational forces because there is no rigid frame member connected to the shell (12, 14) of Garrigues that would prevent the mesh cover (40, 24) from collapsing within the shell (12, 14), particularly when no user is inside the sleeping bag (10). Also, one could push on the mesh cover (40, 24) of Garrigues with their hand or finger and thus collapse the mesh cover (40, 24) within the

parameters of the shell (12, 14) of the sleeping bag (10) in order to close the at least one vent (40, 30, 20).

As to claim 17, Garrigues in view of Cantwell discloses the sleeping bag of claim 11 as discussed above, and Cantwell also discloses that said fastener (28) is a slide fastener.

Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrigues (U.S. Patent No. 5,881,405) in view of Cantwell (U.S. Patent No. 6,175,976) and Matsuda (U.S. Patent No. 4,072,345).

As to claim 10, Garrigues in view of Cantwell in view of discloses the sleeping bag of claim 1 as discussed above, and Garrigues also discloses a mesh cover attached to the shell for covering the vent opening.

In the alternative, if Garrigues fails to disclose that said mesh cover is collapsible within the shell when the at least one vent is closed, then Matsuda discloses a mesh cover (23) which is collapsible within the shell when the at least one vent is closed (see embodiment of Figs. 3 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of Garrigues in view of Cantwell by making the mesh cover be collapsible within the shell when the at least one vent is closed as taught by Matsuda in order to have a vent structure which can be opened and closed easily for venting a sleeping bag as needed by the occupant of the sleeping bag.

As to claim 15, Garrigues in view of Cantwell discloses the sleeping bag of claim 11 as discussed above, and Garrigues also discloses a mesh cover (40) attached to the shell (12, 14) for covering the vent opening.

In the alternative, if Garrigues fails to disclose that said mesh cover is collapsible within the shell when the at least one vent is closed, then Matsuda discloses a mesh cover (23) which is collapsible within the shell when the at least one longitudinal vent is closed (see embodiment of Figs. 3 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of Garrigues in view of Cantwell by making the mesh cover be collapsible within the shell when the at least one longitudinal vent is closed as taught by Matsuda in order to have a vent structure which can be opened and closed easily for venting a sleeping bag as needed by the occupant of the sleeping bag.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cantwell (U.S. Patent No. 6,175,976) in view of Garrigues (U.S. Patent No. 5,881,405).

As to claim 1, Cantwell discloses a vented sleeping bag (10) comprising:

an elongate shell (12) defining an inner volume sized and shaped to receive a user therein, the elongate shell (12) having a head end (16), a foot end (18), left and right sides (27, 27) extending longitudinally of the shell (12), an overlying portion (24)

adapted to overlie said user and an underlying portion (22) adapted to underlie said user;

a fastener (28) selectively joining the overlying and underlying portions (24, 22) such that the overlying and underlying portions (24, 22) can be partially separated to allow entry into and exit out of the inner volume of the shell (12) by the user;

at least one venting section (32) located adjacent the foot end (18) of the shell (12); and

a closure (38) selectively movable between a closed position (Fig. 1) for closing said at least one venting section (32) and an open position (Fig. 2) for creating a vent opening (34) for ventilating the inner volume of the shell (12).

Cantwell fails to explicitly disclose that the at least one venting section (32) is in said overlying portion (24) of the shell (12) and is located between the left and right sides (27, 27) of the shell (12) or that the venting sections (32) comprise a mesh covering allowing direct venting to the ambient.

However, Garrigues discloses a vented sleeping bag (10) having at least one vent (40, 30, 20) in said overlying portion (14) of the shell (12, 14) and is located between the left and right sides of the shell (12, 14). The examiner notes that the vent duct portion (30) of the at least one vent (40, 30, 20) is in said overlying portion (14) of said shell (12, 14) and is located between the left and right sides of the shell (12, 14), which are recited in claim 11.. Vent (40, 30, 20) includes a mesh covering (40, 24) allowing direct venting to the ambient.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of Cantwell by putting his at least one venting section (32) on the overlying portion (24) of the shell (12) between the left and right sides (27, 27) as taught by Garrigues in order to provide more even cooling between the left and right side and to provide for cooling of the upper portion of the persons body as well as the sides. Further, with Garigues' teaching of a mesh covering, (40, 24) allowing direct venting to the ambient one of ordinary skill in the art would have found it obvious to have provided the Cantwell venting sections (32), along the sides as well as along the proposed overlying central portion thereof, with a mesh covering so as to allow for direct venting to the ambient.

As to claim 2, Cantwell in view of Garrigues discloses the sleeping bag of claim 1 as discussed above, and both Cantwell and Garrigues also disclose that the at least one vent (32 in Cantwell, 40, 30, 20 in Garrigues) extends longitudinally of the shell (12 in Cantwell, 12, 14 in Garrigues).

As to claim 3, Cantwell in view of Garrigues discloses the sleeping bag of claim 2 as discussed above, and Cantwell also discloses that the at least one vent (32) extends longitudinally from generally about the foot end (18) of the shell (12) toward the head end (16) of the shell (12) a distance corresponding to about 10 to 50 percent of the overall length of the shell (12).

The examiner notes that although Cantwell does not explicitly disclose what distance his at least one vent (32) extends along the length of the shell, it appears from the drawing figures that it is approximately 50%. The vent duct portion (30) of the at

least one vent (40, 30, 20) of Garrigues appears to extend longitudinally for a distance of about 75% of the overall length of the shell.

It is well settled that changes in size/proportion do not constitute a patentable difference. See *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), wherein the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Thus, it would have been an obvious expedient to one of ordinary skill in the art at the time the invention was made to have made the at least one vent extend longitudinally along the length of the shell from the foot end towards the head end for a distance of between about 10 to 50% of the overall length of the shell in order to maximize or minimize the cooling effect depending upon the needs of the user to use the sleeping bag.

As to claim 4, Cantwell in view of Garrigues discloses the sleeping bag of claim 3 as discussed above, and Garrigues also discloses that the at least one vent (40, 30, 20) is about midway between the left and right sides of the shell (12, 14).

The examiner notes that the vent duct portion (30) of the at least one vent (40, 30, 20) of Garrigues is about midway between the left and right sides of the shell (12, 14) so that the claim language is deemed to be met by Cantwell in view of Garrigues.

As to claim 5, Cantwell in view of Garrigues discloses the sleeping bag of claim 1 as discussed above, and both Cantwell and Garrigues also disclose that the shell (12 in Cantwell, 12, 14 in Garrigues) further comprises an end panel (26 in Cantwell, 16 in Garrigues) closing the foot end (18 in Cantwell, 17 in Garrigues) of the shell (12 in Cantwell, 12, 14 in Garrigues).

As to claim 6, Cantwell in view of Garrigues discloses the sleeping bag of claim 5 as discussed above, and Garrigues also discloses that the at least one vent (40, 30, 20) extends into the end panel (16) of the shell (12, 14) toward the underlying portion (12) of the shell (12, 14).

The examiner notes that the foot vent portion (40) of the at least one vent (40, 30, 20) of Garrigues extends into the end panel (16) so that this limitation is deemed to be met by Cantwell in view of Garrigues. In other words, attaching a mesh cover to Cantwell so as to extend into the Cantwell end panel would have constituted an obvious expedient at shown and taught by Garrigues.

As to claim 7, Cantwell in view of Garrigues discloses the sleeping bag of claim 1 as discussed above, and Cantwell also discloses that the at least one vent (32) is defined by adjacent edges of the shell (12), said edges being separable when the closure is in an open position (see Fig. 3 to Fig. 4) to create said vent opening (34) for ventilating the inner volume of the shell (12).

As to claim 8, Cantwell in view of Garrigues discloses the sleeping bag of claim 7 as discussed above, and Cantwell also discloses that the shell (12) tapers toward the foot end (18) of the shell (12) when the closure (38) is in its closed position (see Fig. 1),

and wherein said edges of the shell (12) defining said vent (32) are separable when the closure (38) is in an open position (see Fig. 4) to expand the said inner volume of the shell (12) adjacent said foot end (18) of the shell (12).

As to claim 9, Cantwell in view of Garrigues discloses the sleeping bag of claim 1 as discussed above, and Cantwell also discloses that the closure (38) comprises a single slide fastener (40) for selectively adjusting the size and position of the vent opening (34).

Cantwell fails to explicitly disclose that the closure (38) comprises a pair of slide fasteners for selectively adjusting the size and position of the vent opening (34).

However, it is well settled that a duplication of parts does not constitute a patentable difference. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete. The claimed water seal has a "web" which lies ** in the joint, and a plurality of "ribs" ** >projecting outwardly from each side of the web into one of the adjacent concrete slabs. <The prior art disclosed a flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a plurality of ribs, the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.).

Therefore, it would have been an obvious expedient to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of Cantwell in view of Garrigues with a pair of slide fasteners for selectively adjusting the size and position of

the vent opening since Cantwell discloses a single slide fastener and duplication of parts does not constitute a patentable difference.

As to claim 10, Cantwell in view of Garrigues discloses the sleeping bag of claim 1 as discussed above, and Garrigues also discloses a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening allowing direct venting to the ambient. Therefore, and as stated with respect to arguments presented against claim 1, with Garigues' teaching of a mesh covering, (40, 24) allowing direct venting to the ambient one of ordinary skill in the art would have found it obvious to have provided the Cantwell venting sections (32), (along the sides as well as along the proposed overlying central portion thereof), with a mesh covering so as to allow for direct venting to the ambient. As such, the mesh extending across the portions (32) of Cantwell would collapse within the shell when the vent is closed, (see Figs. 3 and 4 of Cantwell, for example).

As to claim 18, Cantwell in view of Garrigues discloses the sleeping bag of claim 1 as discussed above, and Cantwell also discloses that said fastener (28) is a slide fastener.

As to claim 11, Cantwell discloses a vented sleeping bag (10) comprising:

an elongate shell (12) defining an inner volume sized and shaped to receive a user therein, the elongate shell (12) having a head end (16), a foot end (18), left and right sides (27, 27) extending longitudinally of the shell (12), an overlying portion (24) adapted to overlie said user and an underlying portion (22) adapted to underlie said user;

a fastener (28) selectively joining the overlying and underlying portions (24, 22) such that the overlying and underlying portions (24, 22) can be partially separated to allow entry into and exit out of the inner volume of the shell (12) by the user;

at least one longitudinal venting section (32) extending longitudinally of the shell (12); and

a closure (38) selectively movable between a closed position (Fig. 1) for closing said at least one longitudinal venting sections (32) and an open position (Fig. 2) for creating a vent opening (34) for ventilating the inner volume of the shell (12).

Cantwell fails to explicitly disclose that the at least one longitudinal venting section (32) is in said overlying portion (24) of the shell (12) and is located between the left and right sides (27, 27) of the shell (12) or that the venting sections (32) comprise a mesh covering allowing direct venting to the ambient.

However, Garrigues discloses a vented sleeping bag (10) having at least one longitudinal vent (40, 30, 20) in said overlying portion (14) of the shell (12, 14) and is located between the left and right sides of the shell (12, 14). The examiner notes that the vent duct portion (30) of the at least one vent (40, 30, 20) is longitudinal, is in said overlying portion (14) of said shell (12, 14), and is located between the left and right sides of the shell (12, 14) all of which are recited in claim 11.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of Cantwell by putting his at least one longitudinal venting section (32) on the overlying portion (24) of the shell (12) between the left and right sides (27, 27) as taught by Garrigues in order to provide more

even cooling between the left and right side and to provide for cooling of the upper portion of the persons body as well as the sides. Further, with Garigues' teaching of a mesh covering, (40, 24) allowing direct venting to the ambient one of ordinary skill in the art would have found it obvious to have provided the Cantwell venting sections (32), along the sides as well as along the proposed overlying central portion thereof, with a mesh covering so as to allow for direct venting to the ambient.

As to claim 12, Cantwell in view of Garrigues discloses the sleeping bag of claim 11 as discussed above, and Garrigues also discloses that the shell (12, 14) further comprises an end panel (16) at the foot end (17) of the shell (12, 14) and wherein the at least one longitudinal vent (40, 30, 20) is partially positioned within the overlying portion (14) and the end panel (16).

The examiner notes that the foot vent portion (40) of the at least one longitudinal vent (40, 30, 20) of Garrigues is in the end panel (16) and the vent duct portion (30) of the at least one longitudinal vent (40, 30, 20) of Garrigues is in the overlying portion (14) so that the claim language is met.

As to claim 13, Cantwell in view of Garrigues discloses the sleeping bag of claim 11 as discussed above, and Garrigues also discloses that the at least one longitudinal vent (40, 30, 20) is located about midway between the left and right sides.

The examiner notes that the vent duct portion (30) of the at least one longitudinal vent (40, 30, 20) is located about midway between the left and right sides of the shell (12, 14) so that the claim language is deemed to be met by Cantwell in view of Garrigues.

As to claim 14, Cantwell in view of Garrigues discloses the sleeping bag of claim 11 as discussed above, and Cantwell also discloses that the closure (38) comprises a single slide fastener (40) for selectively adjusting the size and position of the vent opening (34).

Cantwell fails to explicitly disclose that the closure (38) comprises a pair of slide fasteners for selectively adjusting the size and position of the vent opening (34).

However, it is well settled that a duplication of parts does not constitute a patentable difference. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete. The claimed water seal has a "web" which lies ** in the joint, and a plurality of "ribs" ** >projecting outwardly from each side of the web into one of the adjacent concrete slabs. <The prior art disclosed a flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a plurality of ribs, the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.).

Therefore, it would have been an obvious expedient to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of Cantwell in view of Garrigues with a pair of slide fasteners for selectively adjusting the size and position of the vent opening since Cantwell discloses a single slide fastener and duplication of parts does not constitute a patentable difference.

As to claim 15, Cantwell in view of Garrigues discloses the sleeping bag of claim 11 as discussed above, and Garrigues also discloses a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening allowing direct venting to the ambient. Therefore, and as stated with respect to arguments presented against claim 1, with Garigues' teaching of a mesh covering, (40, 24) allowing direct venting to the ambient one of ordinary skill in the art would have found it obvious to have provided the Cantwell venting sections (32), (along the sides as well as along the proposed overlying central portion thereof), with a mesh covering so as to allow for direct venting to the ambient. As such, the mesh extending across the portions (32) of Cantwell would collapse within the shell when the vent is closed, (see Figs. 3 and 4 of Cantwell, for example).

As to claim 16, Cantwell in view of Garrigues discloses the sleeping bag of claim 11 as discussed above, and Cantwell also discloses that the at least one longitudinal vent (32) is defined by adjacent edges of the shell (12), said edges being separable when the closure is in an open position (see Fig. 3 to Fig. 4) to create said vent opening (34) for ventilating the inner volume of the shell (12).

As to claim 17, Cantwell in view of Garrigues discloses the sleeping bag of claim 11 as discussed above, and Cantwell also discloses that said fastener (28) is a slide fastener.

Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cantwell (U.S. Patent No. 6,175,976) in view of Garrigues (U.S. Patent No. 5,881,405) and Matsuda (U.S. Patent No. 4,072,345).

As to claim 10, Cantwell in view of Garrigues discloses the sleeping bag of claim 11 as discussed above, and Garrigues also teaches a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening to allow direct venting to the ambient.

In the alternative, if Cantwell in view of Garrigues fails to disclose that said mesh cover is collapsible within the shell when the at least one vent is closed, then Matsuda discloses a mesh cover (23) which is collapsible within the shell when the at least one vent is closed (see embodiment of Figs. 3 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of Cantwell in view of Garrigues by making the mesh cover be collapsible within the shell when the at least one vent is closed as taught by Matsuda in order to have a vent structure which can be opened and closed easily for venting a sleeping bag as needed by the occupant of the sleeping bag. As such, the mesh extending across the portions (32) of Cantwell would collapse within the shell when the vent is closed, (see Figs. 3 and 4 of Cantwell, for example).

As to claim 15, Cantwell in view of Garrigues discloses the sleeping bag of claim 11 as discussed above, and Garrigues also discloses a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening to allow direct venting to the ambient.

In the alternative, if Cantwell in view of Garrigues fails to disclose that said mesh cover is collapsible within the shell when the at least one vent is closed, then Matsuda discloses a mesh cover (23) which is collapsible within the shell when the at least one longitudinal vent is closed (see embodiment of Figs. 3 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of Cantwell in view of Garrigues by making the mesh cover be collapsible within the shell when the at least one longitudinal vent is closed as taught by Matsuda in order to have a vent structure which can be opened and closed easily for venting a sleeping bag as needed by the occupant of the sleeping bag. As such, the mesh extending across the portions (32) of Cantwell would collapse within the shell when the vent is closed, (see Figs. 3 and 4 of Cantwell, for example).

Response to Arguments

Applicant's arguments filed on 18 November 2005 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1, 10, and 18 under 35 U.S.C. 103(a) as being unpatentable over Garrigues (U.S. Patent No. 5,881,405) in view of Cantwell (U.S. Patent No. 6,175,976), Appellants argue that claim 1 is patentable over Garrigues in view of Cantwell because the references fail to show or suggest a vented sleeping bag having at least one vent in the overlying portion of the shell located adjacent the shell between the left and right sides of the shell. The examiner disagrees and has shown above how claim 1 is obvious in view of the combination of Garrigues and Cantwell.

Appellants argue that Cantwell fails to disclose or suggest a vent and thus, clearly fails to disclose or suggest at least one vent in the overlying portion of the shell.

The examiner notes that Cantwell has not been relied upon to show a vent. Rather, Garrigues discloses a vent and Cantwell was only relied upon to show an elongate shell having an overlying portion and an underlying portion, wherein the overlying and underlying portions are connected to each other by a fastener and can be partially separated from each other by means of the fastener to allow entry into and exit out of the inner volume of the shell by the user. Thus, in response to Appellants' arguments against Cantwell individually, the examiner notes that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Appellants also argue that Garrigues does not show or suggest a vent on the overlying portion of the shell (i.e., the portion of the shell adapted to overlie the user) because they allege that Garrigues discloses a bivouac sack (10) having an end piece (16) with a foot vent (40) therein, the foot vent (40) cooperating with a vent duct (30) and a latitudinal opening (20) in the head end (18) to circulate air throughout the sack for venting and extracting internal moisture from the sack (10). In other words, it is Appellants' position that, the entire foot vent (40), as shown in Figs. 3, 4, and 7B, is disposed in the end piece (16), that no portion of the foot vent (40) is positioned in the top (14) or overlying portion of the sack (10) because Garrigues' vent duct (30) is not a part of the vent as claimed, but rather is "a duct or tube that is in fluid communication with the foot vent."

The examiner disagrees that Garrigues' vent duct (30) is not a part of the "vent" means or structure of the Garrigues sleeping bag invention. Indeed, Garrigues clearly meant all three of the foot vent (40), central vent duct (30), and head opening (20) structures to cooperated with one another in order to be able to vent the sleeping bag (10). See the last two sentences of Garrigues' Abstract, wherein it states that:

> The personal shelter also includes a first opening (40) at the foot end, a second opening (20) near the head end, and a semi-rigid duct (30) with an inlet end that is approximately colocated with the first opening and an outlet end that is approximately colocated with the second opening. The semi-rigid duct receives outside air through the first end, mixes the received outside air with moist air within the personal shelter, and exhausts the mixed air through the second end.

See also Garrigues' Summary of the Invention section, col. 1, lines 46-47 and 50-62, wherein it states that:

> In accordance with this invention, a personal shelter for evacuating internal moisture and venting is provided. . . . The personal shelter also includes a first opening at the first end, a second opening at the second end and a semi-rigid duct with a first end that is approximately colocated with the first opening and a second end that is approximately colocated with the second opening. The semi-rigid duct receives outside air through the first end, mixes the received outside air with moist air within the personal shelter, and exhausts the mixed air through the second end.
>
> In accordance with still other aspects of this invention, the duct is tapered from a smaller cross-section at the first end to a larger cross-section at the second end for promoting air flow from the first end to the second end.

See also Garrigues' Detailed Description of the Preferred Embodiment section, col. 4, lines 21-26 and col. 5, lines 7-22, wherein it states that:

> Located just inside the foot vent 40 at the top of the top piece 14 is the intake end of the vent duct 30. The vent duct 30 extends longitudinally along the centerline crest of the top piece 14, to the head opening 20. The vent duct 30 is a semi-rigid construction for receiving air through the foot vent 40 when the foot vent cover 44 is fully or partially open. . . .

> As shown in FIGS. 1, 7A and 7B, the width or diameter of the vent duct 30 increases as it extends from the foot vent 40 to the head opening 20. This tapering of the vent duct 30 promotes the movement of air from outside the bivy sack 10 through foot vent 40, into and through vent duct 30, and out the head opening 20. Selective opening and closing of the foot vent 40 and head opening 20 allows control of the rate of air flow through vent duct 30. Because outside air is drier and colder than air trapped inside the bivy sack 10, the drier outside air draws the moister air from within the interior of the bivy sack 10 through the support material 62. As the mixed air flows forwardly and slightly upwardly through the vent duct 30, it warms, expands, and evaporates any moisture clinging to the support material 60 or the inner wall 62 of the vent duct 30. The expansion of air as it warms creates and maintains an airflow through the vent duct 30.

Clearly, Garrigues' intended his vent duct 30 to be part of his venting system and the venting system of Garrigues would not work as intended were not the vent duct an integral part of the venting process.

Appellants' argument that Garrigues' vent duct (30) does not meet Webster's Third New International Dictionary Unabridged (copyright 2002, page 2541) definition of a "vent" (i.e., an opening or hole for the escape or passage of something (as a gas or liquid) or for the relief of pressure within something (as a boiler)) is misplaced because as the examiner reads the definition, the Garrigues' vent duct (30) reads right on the definition.

Appellants also argue that Garrigues' foot vent (40) reads on the definition of a foot vent in Appellants' specification at page 5, paragraph no. [0021] (i.e., "[t]he vent is defined by adjacent edges 35 of the shell which are joined together when the closure is in its closed position (Fig. 1)."). While Appellants are allowed to be their own lexicographer, they are not allowed to define a term in such a way as to go against the common everyday meaning of a term. Garrigues' clearly intended the vent duct (30) to

be a part of his venting system since he didn't simply call it a duct, but a vent duct and because he intended all three structural parts (i.e., the foot vent (40), the vent duct (30), and the opening (20) to cooperate with each other to perform the venting function. Thus, portions (40, 30, 20) of Garrigues constitute a vent.

Appellants' argument that "[b]oth Garrigues and Cantwell fail to teach or suggest a vent in the overlying portion of the shell located adjacent the foot end of the shell between the left and right side of the shell" is misplaced because Garrigues clearly shows that the vent duct (30) which is a part of the venting means or vent is in the overlying portion of the shell located adjacent the foot end of the shell between the left and right side of the shell and thus, clearly meets the claim language of the Appellants' application.

Applicant's arguments with respect to rejections involving Basch '546 as modified, have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various configurations of sleeping bags are disclose in: U.S. Patent No. 6,931,680 to Bellick et al.; U.S. Patent No. 6,823,678 to Li; U.S. Patent No. 6,986,178 to Turner; U.S. Patent No. 4,996,733 to Tsai; U.S. Patent No. 4,894,878 to Roach; U.S. Patent No. 4,787,105 to Phillips et al.; U.S. Patent No. 4,531,330 to Phillips; U.S. Patent No. 4,719,935 to Gustafson; U.S. Patent No. 2,931,373 to Larson; U.S. Patent No. 4,308,883 to Malone; U.S. Patent No. 6,353,946 to Steiner; U.S. Patent No. 5,913,772 to Clark; U.S. Patent No. 4,719,934 to Mydans; U.S. Patent No. 4,703,521 to Asher et al.; U.S. Patent Application Publication No. 2004/0173251 to Cantwell; U.S. Patent Nos. 4,887,317 and 4,843,647 both to Phillips, Sr. et al.; U.S. Patent No. 2,093,834 to Gaugler; U.S. Patent No. 2,325,305 to Carlile (see Fig. 8); U.S. Patent No. 6,799,339 to Stewart (see Fig. 9); U.S. Patent No. 6,321,764 to Gauger et al.; U.S. Patent No. 6,313,438 to Emerick, Jr.; U.S. Patent No. 2,808,596 to Schreiner; and U.S. Patent No. 5,044,032 to Tesch.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Thursday, 8:30 am to 7:00 pm.

The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gay Ann Spahn, Patent Examiner
January 26, 2006

MICHAEL SAFAVI
PRIMARY EXAMINER
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